

§ 317.3

(2) Diesel fuels and fuel oils, including, but not limited to, No. 1, No. 2, and No. 4 diesel fuel, and No. 1, No. 2, and No. 4 fuel oil.

(f) *Wholesale* means:

(1) All purchases or sales of crude oil or jet fuel; and

(2) All purchases or sales of gasoline or petroleum distillates (other than jet fuel) at the terminal rack or upstream of the terminal rack level.

§ 317.3 Prohibited practices.

It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, to:

(a) Knowingly engage in any act, practice, or course of business—including the making of any untrue statement of material fact—that operates or would operate as a fraud or deceit upon any person; or

(b) Intentionally fail to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or is likely to distort market conditions for any such product.

§ 317.4 Preemption.

The Federal Trade Commission does not intend, through the promulgation of this Rule, to preempt the laws of any state or local government, except to the extent that any such law conflicts with this Rule. A law is not in conflict with this Rule if it affords equal or greater protection from the prohibited practices set forth in § 317.3.

§ 317.5 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 318—HEALTH BREACH NOTIFICATION RULE

Sec.

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AUTHORITY: Public Law 111-5, 123 Stat. 115 (2009).

SOURCE: 74 FR 42980, Aug. 25, 2009, unless otherwise noted.

§ 318.1 Purpose and scope.

(a) This part, which shall be called the "Health Breach Notification Rule," implements section 13407 of the American Recovery and Reinvestment Act of 2009. It applies to foreign and domestic vendors of personal health records, PHR related entities, and third party service providers, irrespective of any jurisdictional tests in the Federal Trade Commission (FTC) Act, that maintain information of U.S. citizens or residents. It does not apply to HIPAA-covered entities, or to any other entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity.

(b) This part preempts state law as set forth in section 13421 of the American Recovery and Reinvestment Act of 2009.

§ 318.2 Definitions.

(a) *Breach of security* means, with respect to unsecured PHR identifiable health information of an individual in a personal health record, acquisition of such information without the authorization of the individual. Unauthorized acquisition will be presumed to include unauthorized access to unsecured PHR identifiable health information unless the vendor of personal health records, PHR related entity, or third party service provider that experienced the breach has reliable evidence showing that there has not been, or could not reasonably have been, unauthorized acquisition of such information.

(b) *Business associate* means a business associate under the Health Insurance Portability and Accountability Act, Public Law 104-191, 110 Stat. 1936, as defined in 45 CFR 160.103.

(c) *HIPAA-covered entity* means a covered entity under the Health Insurance Portability and Accountability Act, Public Law 104-191, 110 Stat. 1936, as defined in 45 CFR 160.103.

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